

STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Susan Gentry)	
	Map 012-00-0, Parcel 250.00)	Davidson County
	Residential Property)	
	Tax Year 2006)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$50,000	\$178,400	\$228,400	\$57,100

An Appeal has been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on February 1, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Susan Gentry Ferguson, the taxpayer who was represented by Attorney Mike Davis and the taxpayers spouse, Roger Ferguson. Present for the county were Donald Black from the Assessor's Office and Jason Poling, Residential Appraiser, also from the Division of Assessments for the Metro. Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 2041 Sunnyslope Lane in Goodlettsville, Tennessee.

The taxpayer, Mrs. Ferguson, contends that the property is worth \$160,000 based on her reply to question #15 of the Appeal form. The land was purchased in 2000, a building permit was taken out in 2001 and the home has been under construction since that time. Mrs. Ferguson states that the home is not habitable, it is only 35% complete¹. There is no drywall, no insulation, and no plumbing, no flooring, no heating, and no cooling and foundation problems. Mrs. Ferguson also stated that the roof leaks and there have been numerous problems with contractors whom she has had to sue to get work done on the property². Mrs. Ferguson presented several photographs to show the problems with her construction. Mr. Davis, the taxpayers attorney, also established through direct

¹ Darrel Lyle, Building Inspector from the Department of Codes Administration submitted an opinion letter to substantiate this contention.

² From Mrs. Ferguson's testimony the problem is the "Log package that [she] purchased for \$75,000 uses larger logs than the usual Log home packages", her logs are 18 to 20 inches in diameter and normally logs are 8 to 10 inches in diameter.

examination that while some work has been completed it would not pass inspection and therefore had to be torn out and repeated.

The assessor contends that the property should be valued at \$228,400 based on the presumption of correctness of the Davidson County Board of Equalization. Mr. Donald Black from the county disagrees with the 35% assessment from Mr. Lyle, who was not present at the hearing, and testified, that based on his experience and physical inspection he opined the home to be 50% complete. However, on cross examination by Mr. Davis he admitted that the structure has no doors, only sub-flooring, no interior dry wall, no heat or air, no plumbing and there is a tarp on the roof, he agrees that the home is not habitable.

The germane issue is the value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values"

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$ 210,000³ based upon the testimony of the taxpayer an interpretation of Tenn. Code Ann. § 67-5-603 (b) (1), et. seq. which states in relevant part:

(b) (1) If, after January 1 and before September 1 of any year, an improvement or new building is completed and ready for use or occupancy, or the property has been sold or leased, the assessor of property shall make or correct the assessment of such property, on the basis of the value of the improvement at the time of its completion, notwithstanding the status of the property as of the assessment date of January 1; provided, that for the year in which such improvement or building is completed, the assessment, or increase in assessment, of the improvement shall be prorated for the portion of the year following the date of its completion.

(2) The state, county or municipal tax collector shall collect taxes on the basis of the revised or corrected assessment as prorated by the assessor.

(3) For the purpose of assessment, an improvement or new building **shall be deemed completed and ready for use or occupancy when the structural portion of the building or improvement is substantially completed, even though the interior finish or certain appointments may be left to the choice of a prospective buyer** or tenant after consummation of a sale or lease of the property.

(4) Any improvement or new building shall be deemed completed and to have a value for assessment purposes when the real property upon which such improvement or new building is located shall have been conveyed to a bona fide purchaser,

³ Mrs. Ferguson testified that she had expended upwards of \$150,000 in construction cost since purchasing the land and her answer to question #15 on the appeal form.

or when such new building or improvement has been occupied or used or shall be suitable for occupancy or use, whichever shall first occur. In no event shall any improvement or new building be considered incomplete for valuation or assessment purposes for more than one (1) calendar year immediately following the date on which such construction was commenced.

(5) In the event an improvement or new building shall be considered incomplete for assessment purposes on January 1 of any year, the owner of such improvement or new building shall, not later than February 1 of that year, submit to the assessor of property, in writing, the total cost of all materials used in such incompleting structure as of January 1, and the assessor of property shall assess such incomplete structure as real property, based on the fair market value of the materials used therein. Actual cost of all materials shall be prima facie evidence of the value of such incompleting improvements.

The taxpayer must meet her burden in order to receive her requested relief. In order to accomplish that burden the taxpayer must show by the preponderance of the evidence⁴ that values set by the Davidson County Board of Equalization do not correctly reflect the fair market value of the subject property as of the date of assessment.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

The Administrative judge is of the opinion that while the subject property clearly is not habitable it still has a value which, under the statutes, has to be assessed. There are generally three (3) approaches to determine the market value of real estate. "All 3 approaches to value are not always relevant or useful in the valuation of every property. For instance, the income approach does not lend itself to the valuation of single-family residences, which are typically purchased for their income producing abilities. The cost approach is not applicable to the valuation of vacant land. The sales comparison approach can usually be eliminated in the valuation for example, a public library or zoo, . . ." *Property Assessment Valuation*, 2nd Ed. © 1996, International Association of Assessing Officers.

With respect to the issue of market value, the administrative judge finds that Mrs. Ferguson did introduce sufficient evidence to affirmatively establish the market value of subject property as of January 1, 2006, the relevant assessment date pursuant to T. C. A. § 67-5-504(a).

⁴ Uniform Rules of Procedure for Hearing Contested Cases. Rule 1360-4-1-.02(7)

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$50,000	\$160,000	\$210,000	\$52,500

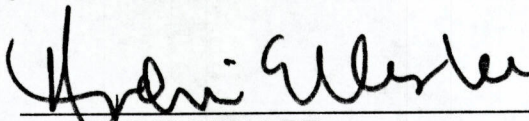
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 19th day of March, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mark Davis, Esq.
Jo Ann North, Assessor of Property